

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Comment Requested on 7 Percent Interest Rate	)	WT Docket No. 97-82
Imposed on C-Block Installment Payment Plan	)	
Notes; Waivers Requested by Broadband PCS	)	DA 97-1152
C-Block Licensees	)	

**REPLY COMMENTS OF JOINT C-BLOCK APPLICANTS**

Pursuant to Public Notice DA 97-1152, Savannah Independent PCS Corporation ("Savannah"), Brookings Municipal Utilities ("Brookings"), PVT Wireless Limited Partnership ("PVT"), PCS Plus, L.L.C. ("PCS Plus"), Southwestern Minnesota PCS Limited Partnership ("Southwestern MN"), Western Minnesota PCS Limited Partnership ("Western MN") North Dakota PCS Limited Partnership ("North Dakota") and Horizon Personal Communications, Inc. ("Horizon"), (collectively, "Joint C-Block Applicants"), hereby submit the following reply comments to address the 7 percent interest rate on eligible broadband PCS C-Block licensees whose licenses were conditionally granted on September 17, 1996, and who elected to utilize the Commission's installment payment plan. Each of the Joint C-Block Applicants is a small business which successfully participated in the Commission's auction for C-Block Personal Communications Service (PCS) licenses and elected to utilize the Commission's installment payment plan.<sup>1/</sup> The exact licenses held by each company are a matter of Commission record.

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<sup>1/</sup> The FCC released its September 17, 1996 Public Notice without providing any information whatsoever regarding the interest to be assessed upon installment notes for granted licenses. Nevertheless, in November, 1996, each of the Joint C-Block Applicants received separate installment plan notes for its C-Block licenses which stated that interest thereon would be computed at the annual rate of seven percent (7.0%) per annum. On November 7, 1997, Horizon (under its previous name "Horizon Infotech, Inc.") filed a letter with FCC Managing Director Andrew S. Fishel ("Horizon Request") requesting correction of the annual percentage rate for C-Block installment notes to 6.535 percent per annum. Savannah and each of the other Joint C-Block Applicants joined in the Horizon Request in its cover letter accompanying the submission of its C-Block

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As discussed below, the record before the Commission unequivocally demonstrates that the correct interest rate for this and other C-Block PCS licenses granted on September 17, 1996 is the actual 6.535 interest rate to be paid by the Treasury Department for the ten-year Treasury Notes sold during the August 7, 1996 auction.

A majority of commenters to the June 2, 1997 Public Notice, DA97-1152, including Airadigm Communications, Inc. ("Airadigm"), ComScape Telecommunications of Charleston License, Inc. ("ComScape"), DiGiPH PCS, Inc. ("DIGIPH"), the September 17 Alliance ("Alliance"), Eldorado Communications, L.L.C. ("Eldorado"), Kmtel, L.L.C. ("Kmtel"), Mercury PCS, L.L.C. ("Mercury"), Miccom Associates ("Miccom"), Fortunet Communications, LP ("Fortunet"), Indus, Inc. ("Indus"), Chase Telecommunications, Inc. ("Chase"), National Association of Black-Owned Broadcasters ("NABOB"), Quantum Communications Group, Inc. ("Quantum"), Integrated Communications Group Corporation ("Integrated") and Urban Communicators PCS Limited Partnership ("Urban") agree with the Joint C-Block Applicants that the appropriate interest rate for the initial C-Block installment note is the actual 6.535 percent rate. With respect to PCS auctions, the Commission has adopted Section 24.711(b)(3) of the Rules, which states that the interest imposed on installment payments by eligible C Block

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installment notes to the United States Treasury Department. On December 17, 1996, the Commission stated, in a letter (hereinafter "the Kennard/Farquhar Letter"), that the interest rate of 7.0% for the C Block licenses conditionally granted to eligible small businesses on September 17, 1996 is correct. On January 16, 1997, Savannah filed a timely Petition for Reconsideration of the Commission's determination of the interest rate of 7.0% for the C Block licenses, as stated in the Kennard letter. However, the Bureau's Order DA 97-1153 (Petitions for Reconsideration of Note and Security Agreement for C Block PCS Licensees) (*released* June 2, 1997), failed to address the substantive arguments put forth in Savannah's Petition for Reconsideration, the Horizon Request, or any of the letters submitted by the Joint C-Block Applicants.

licensees qualifying as small businesses shall be "based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted." To clarify what is intended by this rule, the Commission has made it clear that interest on installments should be charged "at a rate no higher than the government's cost of money."<sup>2/</sup> The actual 6.535 percent rate at which ten-year Treasury notes sold during the August 7, 1996 Treasury auction constituted the government's actual cost of money at the time of the grant of its C-Block applications, and this 6.535 percent rate is therefore the proper interest rate under Section 24.711(b)(3) of the Rules, and Commission Orders. As such, the 6.535 interest rate is the only reasonable and appropriate interest rate that may be imposed upon Savannah and other C Block licensees under Section 24.711(b)(3) of the Rules. A similar "cost of money" argument was raised by Omnipoint Communications, Inc. ("Omnipoint") in its December 16, 1996 request for waiver of the 7.00 percent rate, which was dismissed by the Commission as untimely.

Four commenters, Sprint Spectrum LP d/b/a Sprint PCS ("Sprint"), Pinnacle Telecom LP ("Pinnacle"), Pioneer Telephone Association ("Pioneer") and Next Wave Telecom, Inc. ("NextWave") appear to be against this correction of the methodology by which the C-Block installment plan financing rate was calculated. However, none of these commenters argues that the Commission correctly calculated the 7.0 percent interest rate it imposed upon September 17, 1996 C-Block grantees, and none attempts to refute the fact that the correct rate should reflect the "government's cost of money," as shown by each of the Joint C-Block Applicants as early

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<sup>2/</sup> *Second Report and Order*, (Implementation of Section 309(j) of the Communications Act -- Competitive Bidding), PP Docket No. 93-253, 9 FCC Rcd 2348, 2390-91 (1994).

as November of 1996. Sprint argues that a post-auction change of the PCS entrepreneurs block rules is required in order for the Commission to calculate the interest rate in accordance with these principles. In fact, the opposite is true. As demonstrated above, the Commission is required to use the government's "cost of money" in determining the rate, and the yield rate is the only calculation which does so. Therefore, use of the coupon rate would constitute a prohibited retroactive rule change. NextWave benefits from a lower rate of interest (6.5 percent) when the coupon rate is incorrectly used as a benchmark, rather than the correct "yield" or "yield rate." This disparity came about by happenstance, since NextWave's applications were delayed by the need for the Commission to address the petitions filed against NextWave's applications. While the Joint C-Block Applicants can understand that NextWave wishes to preserve its more favorable rate, this anomaly in the licensing process should not prevent the Commission's use of the correct calculation method, as shown above.

As demonstrated by Savannah Independent PCS Corporation in its January 16, 1997 Petition for Reconsideration ("Savannah Petition"), "the yield rate is the only interest rate measuring, in all cases, the actual cost to the government of the money raised by the sale of Treasury notes." Savannah Petition at 5 (emphasis in original). The Savannah Petition also demonstrates (at pages 5-7) that; (1) the "coupon rate" sought to be imposed by the Bureau is not a true "rate" of interest, (2) the coupon rate does not reflect the government's cost of money, except in those rare instances (not applicable herein) where the notes are sold at auction at a price exactly equal to their face value, (3) legal precedent indicates that the yield represents the

true cost of money to the government<sup>3/</sup>, and (4) the financial community also has recognized that the yield is the accurate and appropriate interest rate for coupon notes and other government securities. A copy of the Savannah Petition is attached, and is incorporated herein.

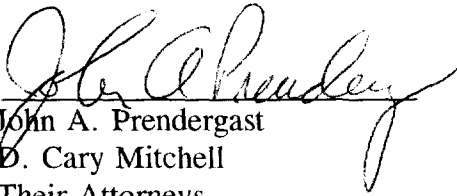
On Monday, June 30, 1997, the Bureau held a Public Forum to discuss broadband PCS C- and F-Block installment payment issues ("June 30 Public Forum"). During the June 30 Public Forum, one of the Bureau's expert panelists representing the financial community, Mr. John Bensche, a Vice President of Lehman Brothers, indicated that the FCC was plainly wrong when it imposed the 7.0 percent coupon rate on C-Block licensees receiving installment financing and that the 6.535 percent rate was the correct rate to utilize. None of the other financial experts at the June 30 Public Forum disagreed with Mr. Bensche's unequivocal assertion.

In sum, the 6.535 percent yield rate resulting from actual sales of ten-year Treasury notes during the August 7, 1996 Treasury auction constituted the governments actual cost of money for such obligations. Common sense, judicial precedent and recognized financial community experts agree that this 6.535 percent rate is the interest rate which most accurately measures the actual cost to the government of the subject notes. It is therefore the only reasonable and appropriate interest rate that may be imposed upon Savannah, the Joint C-Block Applicants and other C Block licensees under Section 24.711(b)(3) of the Rules.

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<sup>3/</sup> See, Commonwealth Edison Co. V. Department of Energy, 877 F.2d 1042, 1046 (D.C. Cir. 1989).

Respectfully submitted,  
**JOINT C-BLOCK APPLICANTS**

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